

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EFRAIN GARCIA-GONON and
CARLOS MACARIO-CHAVEZ,

Defendants.

No. CR 04-83

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER _____

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NUMBER _____

Neither in these instructions nor in any ruling, action, or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NUMBER _____

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NUMBER _____

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions, and comments by the lawyers are not evidence.

2. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NUMBER _____

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence – the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER ____

In this case, Carlos Macario-Chavez did not testify. No inference of guilt can be drawn from this. Neither defendant is required to testify. The burden of proof remains upon the government to prove the guilt of each defendant.

INSTRUCTION NUMBER _____

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness, including a defendant, who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness' intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness' memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NUMBER ____

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’ present testimony.

INSTRUCTION NUMBER ____

You have heard testimony that Carlos Macario-Chavez made statements to the government after his arrest and before trial. Acts and statements which are made before the crime began or after it ended are admissible only against the person making them and should not be considered by you against any other defendant.

INSTRUCTION NUMBER _____

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NUMBER _____

Testimony from depositions was introduced into evidence. A deposition is testimony taken under oath before the trial and preserved in writing and sometimes on video tape. Consider deposition testimony as if it had been given in court.

INSTRUCTION NUMBER ____

Exhibits have been admitted into evidence and are to be considered along with all the other evidence to assist you in reaching a verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdict, in the same condition as it was received by you.

INSTRUCTION NUMBER _____

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER _____

The Indictment in this case consists of one charged offense:

Count 1 charges that between August 2, 2004 and August 4, 2004, Efrain Garcia-Gonon and Carlos Macario-Chavez knowingly and in reckless disregard of the fact that eight aliens had come to, entered, or remained in the United States in violation of the law, did transport or move the eight aliens within the United States from Los Angeles, California, to Victor, Iowa, en route to Chicago, Illinois, in furtherance of such violation of the law. Each defendant has pleaded not guilty to this charge.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, each defendant is presumed to be innocent. Thus each defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find each defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged as to the defendant under consideration by you.

Keep in mind that you must give separate consideration to the evidence about each individual defendant. Each defendant is entitled to be treated separately, and you must return a separate verdict for each defendant.

There is no burden upon a defendant to prove that he is innocent.

INSTRUCTION NUMBER ____

The crime of transporting an illegal alien, as charged in Count 1 of the Indictment, has four essential elements, which are:

One, Yovany Lopez-Ramirez, Arnoldo Velasquez-Delgado, Graviel Salas-Salas, Eswin Escobar-Cardona, Maria Tzoc-Salvador, Augusto Temaj-Jiguan, Noe Perez-Ramos, and Manuel Iguir-Pol were aliens;

Two, Yovany Lopez-Ramirez, Arnoldo Velasquez-Delgado, Graviel Salas-Salas, Eswin Escobar-Cardona, Maria Tzoc-Salvador, Augusto Temaj-Jiguan, Noe Perez-Ramos, and Manuel Iguir-Pol were not lawfully in the United States;

Three, the defendants knew or were in reckless disregard of the fact that Yovany Lopez-Ramirez, Arnoldo Velasquez-Delgado, Graviel Salas-Salas, Eswin Escobar-Cardona, Maria Tzoc-Salvador, Augusto Temaj-Jiguan, Noe Perez-Ramos, and Manuel Iguir-Pol were not lawfully in the United States; and

Four, the defendants knowingly transported or moved Yovany Lopez-Ramirez, Arnoldo Velasquez-Delgado, Graviel Salas-Salas, Eswin Escobar-Cardona, Maria Tzoc-Salvador, Augusto Temaj-Jiguan, Noe Perez-Ramos, and Manuel Iguir-Pol, in furtherance of such aliens' unlawful purpose of remaining in the United States unlawfully.

An alien is a person who is not a natural-born or naturalized citizen of the United States. An alien is not lawfully in this country if the person was not duly admitted by an Immigration Officer or crossed a border into the United States without being inspected by an immigration official.

If all of these essential elements have been proved beyond a reasonable doubt as to the defendant under consideration by you, then you must find that defendant guilty of the crime charged; otherwise, you must find the defendant under consideration by you not guilty of the crime charged under Count 1.

INSTRUCTION NUMBER _____

You will note the Indictment charges that the offense was committed “between about” certain dates. The government need not prove with certainty the exact date or the exact time period of the offense charged. It is sufficient if the evidence established that the offense occurred within a reasonable time of the date or period of time alleged by the Indictment.

INSTRUCTION NUMBER _____

An act is done “knowingly” if a defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that a defendant knew that his acts or omissions were unlawful. You may consider the evidence of a defendant’s acts and words, along with all other evidence, in deciding whether a defendant acted knowingly.

To act with “reckless disregard” means to be aware of, but to consciously or deliberately ignore, facts and circumstances clearly indicating that the person being transported was an alien who had entered or remained in the United States in violation of law.

You may not find that the defendant acted knowingly, however, if you find that the defendant actually believed that the aliens were legally present in the United States or if you find that the defendant was simply careless. A showing of negligence, mistake or carelessness is not sufficient to support a finding of knowledge.

INSTRUCTION NUMBER ____

Knowledge may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate knowledge or lack of knowledge.

INSTRUCTION NUMBER _____

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NUMBER ____

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict - whether guilty or not guilty - must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

(CONTINUED)

INSTRUCTION NUMBER ____ (Cont'd.)

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone – including me – how your votes stand numerically.

Finally, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

INSTRUCTION NUMBER ____

Attached to these instructions you will find two Verdict Forms. A Verdict Form is simply the written notice of the decision that you reach in this case. The answer to each Verdict Form must be the unanimous decision of the jury.

You will take each Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed on an answer to each Verdict Form, your foreperson will fill out each Form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdict as accords with the evidence and these instructions.

DATE

**LINDA R. READE
JUDGE, U. S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EFRAIN GARCIA-GONON and
CARLOS MACARIO-CHAVEZ,

Defendants.

No. CR 04-83

**VERDICT FORM
EFRAIN GARCIA-GONON**

We, the Jury, find the defendant, Efrain Garcia-Gonon, _____ of the
Guilty/Not Guilty
crime charged in Count 1 of the Indictment.

FOREPERSON

DATE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EFRAIN GARCIA-GONON and
CARLOS MACARIO-CHAVEZ,

Defendants.

No. CR 04-83

**VERDICT FORM
CARLOS MACARIO-CHAVEZ**

We, the Jury, find the defendant, Carlos Macario-Chavez, _____ of the
Guilty/Not Guilty
crime charged in Count 1 of the Indictment.

FOREPERSON

DATE